IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.909 OF 2006
IN
ARBITRATION PETITION NO.318 OF 2006

Carona Limited,
a Company registered under the
provisions of the Companies' Act, 1956
having its office at New Udyog Mandir
Compound, Mogul Lane, Mahim (West),
Mumbai-400 016. ...Appellant.

Versus

Sumangal Holdings
having its address at 301, Kumudini,
7th Road, Rajawadi, Ghatkopar (East),
Mumbai-400 077. ...Respondent.

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Mr. S.K. Sen i/b. M/s. Sanjay Udeshi & Co. for the Appellant.

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CORAM : R.M. S.KHANDEPARKAR &
DR. D.Y. CHANDRACHUD, JJ.

April 25, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

An Arbitration Petition in which the Appellant sought relief under Section 9 of the Arbitration and Conciliation Act, 1996, has

been dismissed by Mr.Justice D.K. Deshmukh on the ground that since the dispute between the parties arises out of an agreement of leave and licence, the Presidency Small Causes Court has exclusive jurisdiction over the subject matter under Section 41 of the Presidency Small Cause Courts Act, 1882. The Learned Single Judge has, in taking this view, relied upon his judgment dated 22nd August 2005 in **Siemens Ltd. vs. Captech Online Pvt. Ltd**.[1]

2. The Appellant in the Arbitration Petition, out of which these proceedings arise, sought the following reliefs:

-(i) A direction to the Respondent to hand over possession of the premises situated on the Second Floor of a building known as Khatau House, Plot No.410/411, New Udyog Mandir Compound, Mogul Lane, Mahim, Mumbai-400 016; (ii) In the alternative, appointment of a Receiver in respect of the premises with a direction to collect compensation at the rate of Rs.35,000/- per day from the Respondent or any occupant for payment to the Appellant; and (iii) A direction to the Respondent to deposit an amount of Rs.71,46,150/-

1 Arbitration Petition No.99 of 2004

as security towards the claim of the Appellant in arbitration.

3. By a leave and licence agreement, the Appellant agreed to permit the Respondent, use and occupation of the premises in dispute for a period of nine years from 10th March 1997 until 9th March 2006. An arbitration clause is contained in the leave and licence agreement. A service agreement and a deposit agreement were also entered into between the parties and the Respondent is stated to have deposited an interest free amount of Rs.2 crores with the Appellant. In pursuance of the licence granted by the Appellant, the Respondent is alleged to have inducted a sub-licensee. Disputes have arisen between the parties and there was an exchange of correspondence to which a reference has been made in the Arbitration Petition. The Appellant claims to have terminated the leave and licence agreement by a notice of termination. The Arbitration Petition contains an averment to the effect that the Respondent has instituted a declaratory suit in the Court of Small Causes claiming tenancy rights in the premises.

4. The Learned Single Judge while dismissing the Arbitration Petition relied upon on his judgment in **Siemens Ltd**. (supra) which was decided on 22nd August 2005. The Learned Judge while holding that an Arbitration Petition is not maintainable, relied on the judgment of the Supreme Court in **Natraj Studio (P) Ltd. vs. Navrang Studio**,[2] and concluded that under the provisions of Section 41 of the Presidency Small Cause Courts Act, 1882, the exclusive jurisdiction to entertain a suit between a licensor and licensee for the recovery of possession and for the recovery of licence fee was conferred on the Court of Small Causes. The jurisdiction of the Civil Court was held to be barred by necessary implication.

5. On behalf of the Appellant, the submission that has been urged is that the judgment of the Learned Single Judge overlooks the consequence of the deletion of the non-obstante provision in Section 41 of the Presidency Small Cause Courts Act, 1882 by Maharashtra Act 24 of 1984. The judgment of the Supreme Court in **Natraj Studio** (supra), it was submitted, was founded on the non-obstante provision contained in Section 28 of the Bombay Rents, Hotel and Lodging

2 AIR 1981 SC 537

House Rates Control Act, 1947.

6. In order to appreciate the submission, it would be necessary to advert to the provisions of Section 41 of the Presidency Small Cause Courts Act, 1882 which are as follows :

> "41. Suits or Proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.
>
> -(1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.
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> -(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, The Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply."

7. Sub-section (1) of Section 41 as it stands now commences

with a non-obstante provision which operates qua anything contained elsewhere in the Act. The Court of Small Causes, subject to sub-section (2) has the conferred with the jurisdiction to entertain and try all suits and proceedings between a licensor and licensee or a landlord and tenant relating to recovery of possession of immovable property or the recovery of licence fees, charges or rent in Greater Mumbai. However, by sub-section (2), the legislature has mandated that the provisions of sub-section (1) shall not apply to suits for the recovery of possession or of licence fee, charges or rent to which Bombay Rent Act, certain other Acts stipulated therein or any other law for the time being in force apply. Prior to the amendment of Sub-section (1) of Section 41 by Maharashtra Act 24 of 1984, the words “notwithstanding anything contained in elsewhere in this Act” in sub-section (1) were followed by the words “or in any other law for the time being in force”. The legislative history underlying the amendment of Section 41 is instructive and consistent with the well settled position in law is a legitimate interpretative aid for understanding the circumstances in which the amendment was brought about by the legislature. The Statement of objects and

reasons accompanying the Bill notes that on the recommendations of the Law Commission of India in its Fourteenth Report, the Presidency Small Cause Courts Act, 1882 was amended by the Presidency Small Cause Courts (Amendment) Act (19 of 1976) by which a new Chapter VII was inserted in the principal Act to provide for conferment of exclusive jurisdiction on the Court of Small Causes, Greater Bombay to try suits between licensors and licensees for the recovery of possession of immovable property and of licence fees to which the Rent Act and some of the other laws did not apply, irrespective of the value of the subject matter of the suit. The object of the amendment was stated to be thus:

> "The object of that amendment was to avoid multiplicity of proceedings in different courts, waste of public time and money, unnecessary delays and hardships to litigants etc. and also to make supplementary provisions in the principal Act, so that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee, irrespective of the value of the subject matter, should go to and shall be disposed of by the Court of Small Causes either under that Act or under the Rent Control Act."

The Statement of objects and reasons further records that the State

legislature had considered it appropriate to monitor the working of the newly inserted Chapter VII before similar amendments were made to the Provincial Small Cause Courts Act, 1887 which operate outside Greater Mumbai. The experience in regard to Chapter VII was found to be satisfactory by the Legislature and the amendments of 1984 were, therefore, brought about made so as to make similar provisions in the Provincial Small Causes Court Act, 1887:

> "Since these amendments were of drastic nature, it was considered desirable to watch the working of the new Chapter VII inserted in the Presidency Small Cause Courts Act, 1882, before similar amendments are made in the Provincial Small Cause Courts Act, 1887, which is in force outside the area of Greater Bombay. The experience regarding the working of the new Chapter VII inserted in the Presidency Small Cause Courts Act, 1882, is found to be most satisfactory to the litigants, Judges and members of the Bar. It is necessary to make similar provisions in the Provincial Small Cause Courts Act, 1887. It is, therefore, proposed to insert in the said Act a new Chapter IV-A1 before Chapter IV-A on the lines of the new Chapter VII of the the Presidency Small Cause Courts Act, 1882, with necessary modifications. Consequently it is also proposed to delete clauses (4), (8), (25) and (26) and amend clauses (13) and (38) in the Second Schedule to the Provincial Small Cause Courts Act, 1887, so as to bring the suits covered by these clauses under the jurisdiction of Small Cause Court as recommended by the Law Commission of India in Chapter 13 of its 14th Report."

8. In so far as the amendment to Section 41 of the Presidency Small Cause Courts Act, 1882 is concerned, the Legislature noted that “it has been noticed that there is a minor inconsistency in Sub-sections (1) and (2) of Section 41”. Hence, it was “therefore, proposed to amend Section 41 of that Act to remove inconsistency”. The Statement of objects and reasons discloses that far from intending to obliterate the exclusive jurisdiction that was conferred upon the Presidency Small Cause Court to entertain and try suits relating to licensors and licensees or landlords and tenants relating to the recovery of possession, licence fee, charges or rent, the Legislature had considered it appropriate in view of the satisfactory working of the provisions to incorporate a similar provision into the Provincial Small Causes Courts Act, 1887 as well. The minor inconsistency which the Legislature noted between sub-sections (1) and (2) of Section 41 of the Presidency Small Cause Courts Act, 1882, however, was this. Sub-section (1) on the one hand gave overriding force and effect, notwithstanding anything contained in any other law for the time being in force. At the same time, the effect of sub-section (2) was that sub-section (1) shall not apply to suits or

proceedings for the recovery of possession, licence fee, charges or rent to which the Bombay Rent Act of 1947 and the other Acts spelt out therein applied. For instance, where the Bombay Rent Act, 1947 applied, then the provisions for jurisdiction were to be traceable to the statutory provisions contained in that Act. That is why Sub-section (1) of Section 41 was required to be made subject to sub-section (2). By the Amending Act of 1984, the Legislature noted a "minor inconsistency" between sub-sections (1) and (2), if sub-section (1) were to contain a non-obstante provision overriding any other law for the time being in force. That inconsistency was sought to be removed by the Amending Act. By the Amending Act of 1984, sub-section (2) was also amended so as to substitute the Maharashtra Housing and Area Development Act, 1976 for the Bombay Housing Board Act, 1948 and to incorporate a reference to any other law for the time being in force.

9. The legislative history and the plain meaning of the statutory provision would militate against accepting the submission of the Appellant that the effect of the amendment was to obliterate the

exclusive jurisdiction of the Presidency Small Cause Courts Act, 1882 under Section 41 of the Act.

10. On the contrary, the Court would have due regard to the fact that the Legislature had a stated object – conceived in the public interest - in conferring exclusive jurisdiction to deal with matters between licensors and licensees or between landlords and tenants on the Small Causes Court. Rent Control Legislation constitutes a statutory regulation of the relationship between landlords and tenants and between Licensors and licensees in the public interest and as a matter of protecting public welfare. The question whether the Small Causes Court has exclusive jurisdiction must be understood in the backdrop of the object which the legislature intended to subscribe. A comprehensive remedy has been provided. Sub-section (1) of Section 42 provides an appeal from a decree or order made by the Court of Small Causes exercising jurisdiction under Section 41 to a Bench of two Judges of the Court. In **Natraj Studio Pvt. Ltd. vs. Navrang Studio**, (supra), the Supreme Court had occasion to consider the question as to whether an arbitration agreement could

operate in respect of a dispute as to the possession of premises where the Court of Small Causes had jurisdiction under Section 28 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Sub-section (1) of Section 28 of the Rent Act provided that notwithstanding anything contained in any law, in Greater Bombay, the Court of Small Causes, Bombay, and in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and elsewhere the Court of Civil Judge, Senior Division, shall have jurisdiction to entertain and try suits or proceedings between landlords and tenants relating to the recovery of rent or possession or between licensors and licensees relating to the recovery of licence fee or charges. The Supreme Court held that both on the basis of the non-obstante provision as well as the object of the legislation the exclusive jurisdiction would vest in the Courts stipulated by the Legislature and an arbitration agreement cannot be recognised in the field:

> "The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation

> aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law."

11. These observations would apply in construing the provisions of Section 41 of the Presidency Small Cause Courts Act, 1882. The object of the legislation deals with a matter of public interest and the ground which weighed with the Supreme Court in **Natraj Studio** in excluding the applicability of an arbitration agreement in the field would apply here as well. In his judgment in **Siemens** (supra) Mr.Justice D.K. Deshmukh held that the mere deletion of the non-obstante clause in Section 41 would not make any difference. The Learned Single Judge held that the Legislature having created a special forum for adjudication of disputes of a particular nature by necessary implication, the jurisdiction of the other Civil Courts would also stand excluded. The Learned Judge observed thus:

> "In my opinion, however, mere deletion of non obstante clause from Section 41 will not make much difference. Because of the non-obstante clause contained in Section 41, the jurisdiction of the civil court to entertain the suit between the licensee and licensor for recovery of possession and for recovery of licence fee was expressly barred. But perusal of the provisions of Section 9 of the Civil Procedure Code shows that the jurisdiction of the civil court to entertain the suit can be expressed barred and it also can be barred by necessary implication. It can now be taken as a settled law that when the legislature creates special forum for adjudication of disputes of a particular nature then by necessary implication, jurisdiction of the Court of original civil jurisdiction to entertain those disputes is barred by necessary implication. The legislature by enacting Section 41 created a special forum for adjudication of disputes between the licensor and licensee in relation to recovery of licence fee and recovery of possession. Section 41 also created forum for filing an appeal against the decision of Small Causes Court. Thus, as the legislature has created a special forum for adjudication of disputes between the licensee and licensor in relation to recovery of possession and licence fee, the jurisdiction of the court of original civil jurisdiction will be ousted by necessary implication and, therefore, applying the law laid down by the Supreme Court in Natraj Studios, the reference to arbitration of the question which falls for decision before the Small Causes Court suit under Section 41, cannot be possible."

12. We are in respectful agreement with the view expressed in the judgment of the Learned Single Judge.

13. In these circumstances, we do not find any infirmity in the judgment and order appealed against. The appeal shall accordingly stand dismissed. There shall be no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)